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Atorneys for Plaintiff, DANE ZEEN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANE ZEEN

Plaintiff,

V.

COUNTY OF SONOMA, STEVE FREITAS,
MICHAEL YODER, CHARLES BLOUNT,
and DOES 1-20, inclusive.

Defendants.

Case No: 3:17-cv-02056-LB

**PLAINTIFF'S SEPARATE
MEMORANDUM ON DISPUTED JURY
INSTRUCTIONS**

Date: August 2, 2018
Time: 1:00 p.m.
Courtroom: C, 15th Floor
Judge: The Honorable Laurel Beeler

Trial: August 20, 2018

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1 Plaintiff Dane Zeen presented two special jury instructions. They track the model Ninth
2 Circuit Jury instructions for use of force and damages.
3

4 Plaintiff does not object to the defendants' General Instructions except as to 3.4 and
5 3.5. These instructions are premature and may be confusing to the jury.
6

7 As to the modifications to Ninth Circuit Model instructions defendants propose, plaintiff
8 has several objections.
9

10 1.2 – Claim and Defenses: Plaintiff objects to language “outside of that related to her (sic)
11 lawful detention by Defendant Michael Yoder”. This is a misstatement of plaintiff's claim.
12 Plaintiff alleges that he was subjected to excessive force while being taken into custody for a
13 psychiatric evaluation.
14

15 5.1, 5.2 – Damages: Plaintiff offered a competing proposed instruction number 2, which
16 is more consistent with the evidence.
17

18 5.3 – Damages – Mitigation: Plaintiff objects to this instruction unless evidence is
19 admitted at trial to support this instruction. Plaintiff is unaware of any such evidence.
20

21 5.5 – Punitive Damages. The test is preponderance, not clear and convincing. Plaintiff
22 objects to any other revisions from the Model instruction.
23

24 9.22/25 – Fourth Amendment, Excessive Force: Plaintiff objects to many of the additions
25 and modifications defendants made. In addition, plaintiff objects to the omission of many factors
26 (1 through 12) set forth in Model Instruction 9.25. Plaintiff offered a competing proposed
27 instruction number 1, which is more consistent with the Model instruction.
28

As to defendants' special instructions, plaintiff objects as follows.

Special Instruction 1: Plaintiff objects to this instruction because this language is not
included in Model Instruction 9.25.

Special Instructions 2 and 3: This is not a criminal case and Dane Zeen was not arrested
for committing a crime. In addition, this language is not included in Model Instruction 9.25.

1 Dated: July 12, 2018

2 Respectfully submitted,

3 **SCOTT LAW FIRM**

4
5 Dated: July 12, 2018

6 By: /s/John Houston Scott

7 John Houston Scott
Attorneys for Plaintiff

8
9 **LAW OFFICES OF IZAAK D. SCHWAIGER**

10 By: /s/Izaak D. Schwaiger

11 Izaak D. Schwaiger
Attorneys for Plaintiff

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